IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

S.B.Civil Writ Petition No.1496/1996

Sinnalal. vs. Krishi Upaj Mandi Samiti and others.

Date : 3.9.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.A Agarwal for Mr.RR Nagori, for the petitioner.

Mr.MK Garg)
Mr.M Shishodia) for the respondents.
Mr.HL Kela)

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BY THE COURT :

Heard learned counsel for the parties.

The petitioner is aggrieved against the rejection of his appeal by the District Judge, Pali preferred under Section 9 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (for short 'the Act of 1964') which was preferred against the orders of Estate Officer dated 25.3.1987 and 24.11.1987 by which the Estate Officer passed the order for taking possession of the premises in dispute and

thereafter, passed the order for recovery of mesne profits amounting to Rs.50,623/-.

Brief facts of the case are that a shop no.20 along with godown was allotted to firm Kesrimal Sinnalal of Sumerpur. Said shop was damaged in a fire which broke on 8.5.1981. Respondent Krishi Upaj Mandi Samiti (KUMS) initiated proceedings under Section 4 of the Act of 1964 for eviction of the said firm Kesrimal Sinnalal on the ground of default in payment of rent as according to respondent KUMS, the said firm did not pay the rent from 1.5.1981 and even after the notice dated 25.7.1983 which was served by respondent KUMS upon the said firm. Said firm was served with notice by the Estate Officer and Kesrimal submitted his objections to the claim of the respondent KUMS. Kesrimal submitted that he was sole proprietor of the firm and due to fire, his entire business was ruined and he was not liable to pay any rent. Kesrimal's contention was that the respondent authorities assured that they will get the shop repaired. Kesrimal prayed for quashing the proceedings initiated by the respondent. After filing the reply, said Kesrimal died and that fact came on record on 12.6.1984 in the proceedings under the Act of 1964. Thereafter, a notice was issued to Ratanlal, alleged partner of the said firm, which was served upon him as is clear from copy of order-sheet placed on

record by the petitioner. Said Ratanlal submitted reply on 12.2.1987 stating therein that he is not the partner in the firm and he was only a Munim in the firm. Copy of this reply is also placed on record by the petitioner. That plea was not accepted by the Estate Officer and passed the eviction order on 25.3.1987. Ultimately, on 30.11.1987, the possession of the shop was also taken over by the respondent KUMS. Thereafter, the shop in question and godown was allotted to the respondent no.4 on 18.4.1988. However, the possession of godown was not handed over to the respondent no.4 till 29.3.1996 because of the fact that petitioner Sinnalal preferred appeal against the above two orders dated 25.3.1987 and 24.11.1987 before the District Judge, Pali. The District Judge, Pali vide impugned order dated 22.3.1996 dismissed the appeal of the petitioner on merit as well as on the ground of limitation as in the opinion of District Judge, the petitioner failed to explain the delay in preferring the appeal in the year 1994 to challenge the orders passed in the year 1987. Hence, this writ petition.

According to learned counsel for the petitioner, the notice Annex.1 was issued in the name of firm Kesrimal Sinnalal whereas the notice should have been to all the partners of the firm if the stand taken by the respondents is accepted that the said firm was a

partnership firm. In view of the judgment of the Hon'ble Supreme Court in the case of M/s. Chhotelal Pyarelal, The Partnership Firm & Ors. vs. Shikharchand reported in AIR 1984 SC 1570, the proceedings for eviction against the firm in the name of the firm is not maintainable and all the partners of the firm are required to be impleaded as party in the proceedings for eviction. It is also submitted that this Court in the judgment delivered in the case of Sita Ram & Anr. vs. State of Raj. & Ors. reported in 1988 (1) RLR 991 also held that if the order is passed without impleading the legal representatives and partners of a firm, the proceedings for eviction are vitiated. In view of the above reason, the order passed by the Estate Officer dated 25.3.1987 is absolutely illegal and void as has been passed against the dead person and that too without impleading any of the necessary parties in the proceedings. It is submitted that the initiation of the proceedings in the name of the firm was illegal, apart from the fact that after death of Kesrimal, proceedings could not have been continued.

Learned counsel for the petitioner submitted that the court below committed error in dismissing the appeal on the ground of limitation. It is submitted that the petitioner had no knowledge of the impugned orders till he got information that the respondent department started proceedings for recovery of the

amount from the petitioner. In that situation, the petitioner could have preferred appeal only from the date of knowledge, therefore, there was sufficient reason for not preferring the appeal in time.

Learned counsel for the petitioner submitted that the petitioner submitted several documents before the Court that the firm was sole proprietorship firm and the respondent KUMS itself assured that it will get the shop repaired and, therefore, Kesrimal or the firm were not liable to pay rent.

Learned counsel Mr.MK Garg appearing on behalf of respondents no.1 and 2 submitted that the writ petition of the petitioner deserves to be dismissed on the ground of suppression of material facts. It is submitted that the petitioner himself is not clear or he wants to take benefit of vagueness by not stating that what is right of petitioner Sinnalal. The petitioner's contention is that the firm Kesrimal Sinnalal was the proprietorship firm whereas the petitioner did not place on record copy of the original allotment order. Copy of the original allotment order has been produced by the respondent to show that the shop was allotted to the partnership firm.

It is also submitted that the petitioner stated wrong facts deliberately by stating that the firm was proprietorship firm despite the fact that the

continuous stand of Kesrimal as well as the petitioner was that the firm was a partnership firm which is clear from the fact that the document Annex.14 of the year 1982 wherein Sinnalal and Ratanlal both have been shown as partners of the firm. The document Annex.14 is clear and Sinnalal & Ratanlal were partners is proved from the petitioner's own document and notice was given to Ratanlal, one of the partner, and his contention was rightly not accepted by the Estate Officer that Ratan Lal was Munim in the firm.

Learned counsel Mr.MK Garg also pointed out that not only possession was taken over in the year 1987 and the appeal was preferred in the year 1994 and subsequent to the filing of the writ petition, the petitioner himself paid all the arrears demanded by the respondents no.1 and 2 and in fact, after fire, the petitioner also left the village and started his business at Bangalore and, therefore, the writ petition has been filed just only to linger the matter as he has not challenged his eviction for such a long period of six years and in that situation, this equitable jurisdiction is not available to the petitioner.

Learned counsel Mr.Manish Shishodia has put in appearance on behalf of the respondent no.4 – allottee firm who was given possession of the shop on 29.3.1996 in pursuance of the allotment of shop on 18.4.1988 and

supported the stand taken by the respondents and also submitted that he has taken possession of the shop.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

The contention of the petitioner is not very much clear in the writ petition. His contention as it may be that Kesrimal Sinnalal was a proprietorship firm and the shop in question was allotted to the proprietorship firm then he did not produce the copy of the allotment order of the shop in favour of M/s. Kesrimal Sinnalal. That appears to be not filed purposefully because of the reason that in the allotment order, the firm has been shown as partnership firm. That fact was made clear by the respondents by filing copy of allotment order. Another document which has been filed by the petitioner in this writ petition himself is Annex.14 of the year 1982 wherein Sinnalal and Ratanlal have been shown as partners of the said firm and the explanation given by the petitioner that Kesrimal was proprietor and Sinnalal and Ratanlal were helpers, in view of the clear mention in the document which finds support from the previous state of affairs as is clear from the original allotment order of the year 1978 shows that Ratanlal and Sinnalal, the petitioner, themselves were partners in the firm. In view of the above reasons,

Ratanlal was also partner of the firm in the year 1982 and his only submission before the Estate Officer that he was only Munim, was absolutely wrong and, therefore, that was rightly not accepted by the Estate Officer.

The order dated 25.3.1987 was accepted by the conduct of all the parties and, therefore, taking over of possession of shop in dispute in pursuance of the order dated 25.3.1987 and the possession which was taken on 30.11.1987 was not objected by the petitioner for about seven years. The plea taken by the petitioner that he had no knowledge of the proceedings and the order dated 25.3.1987 during this period of six years only shows that it is only an after thought and it appears that when there was some monetary liability created then only the petitioner thought to challenge the order. The person who was physically dispossessed cannot say that he had not knowledge of eviction till any notice is served upon him.

In view of the above reasons, it is clear that the petitioner deliberately suppressed the order of allotment of shop in the name of the partnership firm - Kesrimal Sinnalal wherein the petitioner himself was partner along with Ratanlal. That fact alone was sufficient for dismissal of the writ petition as wrong statement of fact is material and goes to the root of the matter and the petitioner obtained the order of admission of writ petition because of his stand taken

that he being legal representative of Kesrimal was not heard before passing the order dated 25.3.1987 and none of the partners of the firm were heard.

The learned District Judge was right in dismissing the appeal on the ground of limitation. Apart from it, it appears that the petitioner wants to raise objections about joinder and non-joinder of the parties when the original person who according to the petitioner himself was proprietor of the firm did not choose to raise said objection. The petitioner has to stand on his own legs. He cannot say that the firm was proprietorship firm. In fact, there was sufficient representation of the concerned person before the Estate Officer and if the said person i.e. Ratanlal did not choose to contest the matter, then the firm and the partners themselves are responsible for an adverse orders. In that situation, the petitioner who woke up after the orders dated 25.3.1987 and 24.11.1987 and after six years of his dispossession cannot be allowed to approach the High Court and the powers under Article 226 of the Constitution of India which are equitable in nature are not available to help those persons who were not vigilant for protecting their rights for several years.

In the year 1988 itself, the shop in question was allotted to third party i.e. respondent no.4. The

petitioner himself deposited the amount which was demanded from the petitioner in these very proceedings and the possession has been handed over to the respondent no.4 in the year 1996, then also, there is no reason for setting aside the impugned order and in a case where there was no fault of the respondent no.4.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya